APPEAL NO. 021686
FILED AUGUST 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 3, 2002. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury in the form of an occupational disease; (2) the date of injury is _____; (3) the claimant timely reported the injury; and (4) the claimant had disability from _____, through the date of the hearing. The appellant (self-insured) appeals these determinations on sufficiency grounds. The claimant urges affirmance.

DECISION

We affirm.

The self-insured asserts that the hearing officer erred in allowing the testimony of the claimant's witness, Ms. M. The benefit review conference (BRC) in this case was held on April 2, 2002. The record indicates that Ms. M was first identified as a potential witness on May 9, 2002, and a subpoena was issued for her appearance at the hearing on May 13, 2002. Upon objection by the self-insured to Ms. M's testimony, based on no timely exchange of the identity of the witness, the claimant made no attempt to establish good cause. Notwithstanding, the hearing officer found good cause in that "[Ms. M] was listed as somebody for a subpoena." The hearing officer recognized that the request for a subpoena was not made until more than 15 days after the BRC in this proceeding. The hearing officer's admission of Ms. M's testimony was error. However, to obtain a reversal based on such error the claimant must show that not only was the admission of the testimony error but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Because Ms. M's testimony is largely cumulative of the claimant's, the hearing officer's error in allowing her testimony is not reversible.

The hearing officer did not err in reaching the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the self-insured is **HEALTHSOUTH CORPORATION** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77002.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

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Michael B. McShane
Appeals Judge